

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

AMY GRAY,

Plaintiff,

v.

STATE OF NEVADA,

Defendant.

2:13-cv-00834-GMN-VCF

ORDER AND
REPORT & RECOMMENDATION

(Motion/Application to Proceed *In Forma Pauperis* (#1), Complaint (#1-1), and Motion for Appointment of Counsel #2).

Before the court are plaintiff Amy Gray's Motion/Application to Proceed *In Forma Pauperis* (#1), Complaint (#1-1), and Motion for Appointment of Counsel (#2).

I. *In Forma Pauperis* Application

In plaintiff Gray's application, she asserts that she is unemployed, but that she receives \$90.00 utility reimbursement checks each week. (#1). Plaintiff has a zero balance in her checking and saving accounts, and her regular monthly expenses total \$1,079.00. *Id.* Accordingly, plaintiff's request to proceed *in forma pauperis* is granted pursuant to § 1915(a).

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. § 1915(e)(2). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim

1 to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (internal
2 quotations and citation omitted).

3 In considering whether the plaintiff has stated a claim upon which relief can be granted, all
4 material allegations in the complaint are accepted as true and are to be construed in the light most
5 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of a
6 *pro se* complaint are held to less stringent standards than formal pleading drafted by lawyers. *Haines*
7 *v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). When a court dismisses a complaint under § 1915(e),
8 the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies,
9 unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment.
10 *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citation omitted).

11 **A. Plaintiff’s Complaint/Request for Counsel/Discussion**

12 Plaintiff asserts in her complaint that she is appealing a Family Court decision wherein Judge
13 Jones refused to recuse himself. (#1-1). Plaintiff also asserts that the Nevada Supreme Court denied
14 her appeal due to her inability to pay the filing fees because she has “no income.” *Id.* Plaintiff states
15 that she also “need[s] legal representation on this matter.” *Id.*

16 “The United States District Court, as a court of original jurisdiction, has no authority to review
17 the final determinations of a state court in judicial proceedings.” *Worldwide Church of God v. McNair*,
18 805 F.2d 888, 890 (9th Cir. 1986). 28 U.S.C. § 1257 provides that the proper court in which to obtain
19 such review is the United States Supreme Court.¹ As plaintiff seeks to appeal a state court ruling, this
20 court does not have jurisdiction, and the complaint (#1-1) should be dismissed. *See Id.* Plaintiff’s
21 request for counsel (#2) is therefore denied.

23 ¹ *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476, 103 S.Ct. 1303, 1311, 75 L.Ed.2d 206
24 (1983). *See Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U.S. 281, 296, 90 S.Ct. 1739, 1747, 26 L.Ed.2d
25 234 (1970) (lower federal courts may not sit in review of state courts’ decisions); *Rooker v. Fidelity Trust Co.*, 263 U. S.
26 413, 415-16, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923) (district courts may not exercise appellate jurisdiction over state
courts); *Texaco v. Pennzoil Co.*, 784 F.2d 1133, 1141-42 (2d Cir.) (inferior federal courts may not act as appellate
tribunals over state courts) prob. juris. noted, 477 U.S. 903, 106 S.Ct. 3270, 91 L.Ed.2d 561 (1986).

1 Accordingly, and for good cause shown,

2 IT IS ORDERED that plaintiff Amy Gray's Application to Proceed *In Forma Pauperis* (#1) is
3 GRANTED.

4 IT IS FURTHER ORDERED that plaintiff is permitted to maintain the action to conclusion
5 without necessity of prepayment of any additional fees, costs, or security. This Order granting *forma*
6 *pauperis* status shall not extend to the issuance of subpoenas at government expense.

7 IT IS FURTHER ORDERED that the Motion for Appointment of Counsel (#2) is DENIED.

8 **RECOMMENDATION**

9 IT IS HEREBY RECOMMENDED that the Clerk of Court be ordered to file the complaint (#1-
10 1).

11 IT IS FURTHER RECOMMENDED that the complaint (#1-1) be dismissed *with prejudice*, as
12 "it is clear from the face of the complaint that the [jurisdictional] deficiencies could not be cured by
13 amendment." *See Cato*, 70 F.3d at 1106.

14 **NOTICE**

15 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
16 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held
17 that the courts of appeal may determine that an appeal has been waived due to the failure to file
18 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
19 held that (1) failure to file objections within the specified time and (2) failure to properly address and
20 brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual
21 issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt*
22 *v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

23 DATED this 6th day of June, 2013.

24 
25 **CAM FERENBACH**
26 **UNITED STATES MAGISTRATE JUDGE**